

**PT 07-18**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**COMMUNITY TV NETWORK**  
Applicant

No. 06 PT 0078  
(05-16-1762)  
PIN 13-36-416-042-1022  
Tax Year 2005

Mimi Brin  
Administrative Law Judge

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Jack E. Boehm, Jr. of Fisk Kart Katz & Regan, Ltd. for Community TV Network; Shepard Smith, Special Assistant Attorney General, for the Illinois Department of Revenue

**Synopsis:**

This matter came on for hearing pursuant to the protest and request for hearing filed by Community TV Network (“CTVN” or “Applicant”) following the Denial of Non-homestead Property Tax Exemption (“Denial”) issued by the Illinois Department of Revenue (“Department”) for the tax year 2005 (“Tax year”). The applicant filed its Application for Non-homestead Property Tax Exemption for property located at 2418 W. Bloomingdale, Unit C1, in Chicago, Illinois (“Property” or “Subject Property”). The applicant claims exemption as an institution of public charity under section 15-65 of the Illinois Property Tax Code, 35 ILCS 200/1-1 *et seq.* (“Code”). The Department denied the exemption on the grounds that the property was not in exempt ownership or exempt

use. A hearing in this matter was held whereat oral and documentary evidence was presented. Following a review of the entire record in this cause, I recommend that the Department's exemption denial be finalized, and in support of this recommendation, I make the following findings of fact and conclusions of law:

**Findings of Fact:<sup>1</sup>**

1. The Department's jurisdiction over this matter and its position herein, that is, that for the tax year at issue, 2005, the property was neither in statutorily exempt ownership nor use, was established by the admission of the Denial of Non-homestead Property Tax Exemption. Department Gr. Ex. No. 1 (Denial)
2. Applicant filed an Application for Non-homestead Property Tax Exemption with the Cook County Board of Review for the tax year 2005 for the property located at 2418 W. Bloomingdale, Unit C1, Chicago, Illinois. Department Gr. Ex. No. 1 (PTAX-300 Application for Non-homestead Property Tax Exemption). The County denied the exemption stating that the property was not in exempt use. Id.
3. The property is a commercial condominium unit of approximately 1700 square feet on one floor. Id.; Applicant Ex. No. 10 (architectural drawing of interior); Transcript ("Tr.") p. 25 (testimony of Denise Zaccardi, Executive Director, CTVN ("Zaccardi")). The space is used for instructors' desks, an executive director office, edit rooms; classroom and file spaces. Tr. p. 25 (Zaccardi)

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<sup>1</sup> All Findings of Fact refer to the tax year at issue, 2005, unless otherwise noted.

4. CTVN acquired its ownership interest in the property via a deed on December 10, 2002. Applicant Ex. No. 2 (Deed)
5. Applicant incorporated in Illinois in July, 1980, pursuant to the “General Not For Profit Corporation Act.” Applicant Ex. No. 4 (State of Illinois, Office of the Secretary of State, corporate certificate # 40632, Articles of Incorporation)
6. Applicant is exempt from the payment of federal income tax under section 501 (c) (3) of the Internal Revenue Code, 26 U.S.C.A. § 501 (c) (3). Applicant Ex. No. 3 (Internal Revenue Service exemption letter)
7. The corporation has no shareholders (see Illinois “General Not For Profit Corporation Act of 1986,” 805 **ILCS** 105/101.01 *et seq.*, § 106.05 Shares and dividends prohibited. (“A corporation shall not have or issue shares.”)); Applicant Ex. No. 4 (Articles of Incorporation). It is governed by an unpaid Board of Directors. Applicant Ex. No. 5 (By-Laws, Article II, sections 1, 11)
8. Applicant serves, on the property, persons from ages thirteen (13) through twenty-one (21) all year during, primarily, the hours of 2:30 p.m. and 6:30 p.m. Applicant Ex. Nos. 8 (Brochure), 12 (2005 Annual Report)
9. It provides its programs free of charge to anyone that wishes to participate. Applicant Ex. No. 8 (Brochure). Applicant’s By-Laws are silent as to fees and waivers. Applicant Ex. No. 5 (By-Laws). CTVN promotes its programs through schools and city services i.e. probation and court services. Tr. p. 9 (Zaccardi)

10. Applicant's goals are "to produce community television programming for youth in inner city neighborhoods, to train neighborhood residents in the skills of community television production, to produce community television programs for broadcast and cable television, to hire inner city residents as the community television production staff and to train and provide on-the-job experience for inner-city residents in the communications fields." Applicant Ex. No. 5 (By-Laws, Article I, section 2)
11. The primary product of its program is a cable television program, Hard Cover, that is "written, directed and produced solely by Chicago teenagers." Applicant Ex. Nos. 8 (Brochure), 12 (2005 Program Guide)
12. Applicant had three (3) full-time employees: an executive director whose salary was \$40,000; a program director who was paid \$30,000; and a coordinator of Hard Cover/video instructor whose salary was \$25,000. Applicant Ex. No. 7 (list of employees and corresponding salaries). Ten (10) part-time employees salaries ranged from \$1500 to \$10,000. Id.
13. Pursuant to Applicant's financial statement (Applicant Ex. No. 6) it appears that applicant operates on a tax year ending September 30. For its 2005 tax year, applicant had total revenues of \$220,010, with \$116,259 (53%) coming from government and private foundations "grants" and \$61,536 (28%) from payment for services. \$42,066 (19%) of its funding came from "Direct Public Support". Applicant Ex. Nos. 6 (financial statement), 8 (Brochure listing government/foundation funding), 12 (2005

Program Guide). Of its total revenues \$209,292 (95%) was directly spent on programs services. Applicant Ex. No. 6

**Conclusions of Law:**

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to its authority granted under the Constitution, the General Assembly enacted specific exemptions to the Property Tax Code, 35 **ILCS** 200/1-1 *et seq.* (“Code”). CTVN claims exemption from property tax pursuant to section 15-65 of the Code that states, in relevant part:

§ 15-65 Charitable purposes. All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity.

35 **ILCS** 200/15-65

Therefore, in order for property to be exempt from the imposition of property taxes under this statutory provision, the property must be owned by an institution of public charity and must be actually and exclusively used for charitable or beneficent purposes. The Department’s denial of the exemption was based upon the conclusion that the property was neither in exempt ownership or exempt use.

It is basic to Illinois law that “property tax exemption statutes, such as 15-65, ‘are to be strictly construed and are not to be extended by judicial interpretation beyond the authority given in the constitution.’” Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 288 (2004); Rotary International v. Paschen, 14 Ill. 2d 480, 486

(1958). It is also well settled in Illinois that “the burden of proving the right to exemption is upon the party seeking it... .” Eden Retirement Center, Inc. v. Department of Revenue, supra at 289, and the claimant must do so clearly and convincingly (Randolph Street Gallery v. Zehnder, 315 Ill. App. 3d 1060, 1065 (1<sup>st</sup> Dist. 2000)), with the clear and convincing evidentiary standard “defined as the quantum of proof which leaves no reasonable doubt in the mind of the fact finder as to the veracity of the proposition in question.” In the Matter of Jones, 285 Ill. App.3d 8, 13 (3<sup>rd</sup> Dist. 1996). In addition, in determining whether property is exempt from taxation, “every presumption is against the intention of the State to exempt property” (Rotary International v. Paschen, supra at 487), thus, all facts are to be construed and all debatable questions resolved in favor of taxation. Id.

The Illinois Supreme Court, in Methodist Old People’s Home v. Korzen, 39 Ill. 2d 149 (1968), articulated the following six characteristics and criteria for determining whether an entity is a charitable institution pursuant to constitutional and statutory mandates: (1) the organization benefits an indefinite number of people; (2) the organization has no capital, capital stock, or shareholders earning profits or dividends; (3) the organization derives its funds primarily through private and public donation and expends these funds for the purposes expressed in its charter; (4) the organization dispenses its benefits to all people who need and apply for them; (5) the organization places no obstacles in the way of those seeking its benefits; and, (6) the organization uses its property primarily for charitable purposes. Id. at 157; Eden Retirement Center, Inc. v. Department of Revenue, supra at 290-291; Randolph Street Gallery v. Zehnder, supra at 1065.

In this case, the applicant offers its programs at no cost to the participants. There is nothing in its public documents that indicates that the applicant limits the number of persons who can participate in its programs. Also, CTVN has no capital, capital stock or shareholders earning profits or dividends.

The Department argues that applicant provides, primarily, vocational training. The applicant does not dispute this. Its executive director testified, consistent with applicant's By-Laws, that applicant uses technology (currently TV digital media) to train and educate low-income Chicago youth. The young people come to the property after school and on Saturdays year-round, as well as during the summer, and learn to use the technology to develop and produce their own media product. The video product is shown on cable television in Chicago and New York as well as at schools and film festivals. Not only do the young people learn technical skills, but their literacy, work and critical thinking skills are improved in the process. Tr. p. 9 (Zaccardi); see also Applicant Ex. 12, pp. 2-4, pp. 6-7 (Annual Report). In addition, applicant provides a computer lab on the property whereat participants learn, *inter alia*, basic computer skills and desktop publishing. Applicant Ex. No. 12, p. 4.

The Department argues that vocational training is not a charitable purpose. Tr. pp. 45-46 (closing argument). It offers that "training people for jobs in the real world" should not be considered charitable, as charity is providing food and shelter. Tr. p. 51 (closing argument).

I am unable to find support for the Department's position that teaching skills that enable people to find jobs cannot be considered charitable in nature, or that charity is limited to providing food and shelter. Nor did the Department provide any legal basis for

its position. Quite the contrary, the law provides that charity can include endeavors other than providing food and shelter for the needy. In Randolph Street Gallery v. Zehnder, supra, the applicant used its property for art exhibits, performances, art education classes and workshops. The court allowed the exemption determining, in part, that “practically and symbolically integrating contemporary art and art education into the spectrum of community activities in a diverse and rebuilding neighborhood is charity.” Id. at 1068. The court relied on the definition of charity articulated in Crerar v. Williams, 145 Ill. 625 (1893) that provides that “[A] charity, in a legal sense, may be more fully defined as a gift, to be applied consistently with existing law, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public building or works, or otherwise lessening the burdens of government.” Id. at 643. Clearly then, even a narrow reading of what is legally considered charity is broader than providing food and shelter. Congregational Sunday School & Publishing Soc. v. Board of Review, 290 Ill. 108, 113 (1919) (“Charity” is not confined to mere almsgiving or the relief of poverty and distress, but has a wider signification... .”); Coyne Electrical School v. Paschen, 12 Ill. 2d 387, 397-8 (1958); see also, Arts Club of Chicago v. Department of Revenue, 334 Ill. App. 3d 235 (1<sup>st</sup> Dist. 2002) (property of an “arts club” whose purposes were to “encourage, foster, promote and sponsor activities and presentations which would aim to increase public interest in the arts and related activities” and did so through shows, exhibitions, lectures and performances, held exempt).



Despite the fact that I conclude that the programs CTVN offers can be charitable in nature, I cannot conclude that the applicant is entitled to the exemption it seeks. This is because there was no specificity as to the nature of the government “grants” that are the source of the majority of applicant’s income. The applicant provided the names with nothing more regarding its governmental and private foundation funding. The Department questioned whether the government paid CTVN for providing these programs. Tr. p. 54 (closing argument). If that is the case, then CTVN is no different than any other entity, particularly any for-profit entity, that contracts with the government, in arms-length transactions, for payment for its services. These contract payments by the government for services do not lessen any government burden.

In response to this point, applicant said that the burden of government is lessened because the young people are kept off the streets, and it is not necessary to hire more police officers, youth officers and probation officers. Tr. p. 56 (closing argument). This argument, however, applies equally to any for-profit entity that provides services for young people in a manner that keeps them occupied during non-school hours. Unfortunately, I cannot find, nor did applicant offer, any legal basis for its responsive argument.

While the source of funding is not the only criteria for determining charitable status, it is a significant one. First, if an exemption is granted to an entity whose primary source of funding is payment for services, other contractors that rely on and seek out government contracts as the source of their economic viability are seriously disadvantaged with no benefit to the citizenry to offset the fact that, by the grant of exemption, taxes are not being received by the government for the services it must

provide. In such instance, not only is the government's burden in providing services not lessened at all, but there is a greater burden on remaining taxpayers who must cover even more of the costs of the services their government provides to them.

In addition, if the applicant is being paid for its programs via contracts, it is no longer relevant that it does not directly charge the participants. It means that the applicant is receiving its money from only one source, that is, the government that, in turn, gets its money from every taxpayer. Again, no governmental burden is lessened, while the grant of exemption actually deprives the government of the very funds it needs to pay for the programs.

Further, there is a difference between monies that the government grants for programs in which it has an interest, but not a legal mandate to fund, and contracts it enters into through arms-length transactions for services on behalf of its citizens. "The fundamental ground upon which all exemptions in favor of charitable institutions are based is the benefit conferred upon the public by them and a consequent relief, to some extent, of the burdens upon the state to care for and advance the interests of its citizens." School of Domestic Arts and Sciences v. Carr, 322 Ill. 562 (1926); Rev. Ruling 74-205, 1974-1 CB 20, IRC Sec. 61 (distinguishing "grant" from contract for payment, "[T]he Internal Revenue Service has consistently held that payments made under legislatively provided social benefit programs for promotion of the general welfare are not includible in a recipient's gross income."); see also i.e. grants pursuant to 31 U.S.C.A. § 6101 (3) (General Assistance Administration Program Information) (provides that the government acknowledges its interest in specific social benefit, general welfare programs and further recognizes public policies and grants funding for qualified not-for-profits under particular

circumstances in furtherance thereof)). Although it admitted that it did receive monies for services (Applicant Ex. 6; Tr. pp. 52-53), CTVN offered little specific financial information regarding its funding sources, which would provide critical evidence of the basis of its operation. It certainly did not provide its income tax returns, nor did it offer its applications to the various governmental entities from which it received funding.<sup>2</sup> At the very least, I cannot determine whether the government “grants” were actually contract for services payments. As a result, I cannot conclude that CTVN is entitled to the property tax exemption it seeks.

This applicant had the burden to clearly and convincingly prove its entitlement to a property tax exemption as an institution of public charity. Eden Retirement Center, Inc. v. Department of Revenue, *supra* at 287 (“An applicant for a charitable-use property tax exemption must ‘comply unequivocally with the constitutional requirement of exclusive charitable use.’” (citations omitted)) It failed to do so, primarily because it failed to prove that it did not get paid for its services as would, for example, any similarly situated for-profit entity.

**WHEREFORE**, for the reasons stated above, it is recommended that the property identified by Cook County PIN 13-36-416-042-1022 not be exempt for the tax year 2005.

Date: 5/7/2007

Mimi Brin  
Administrative Law Judge

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<sup>2</sup> In most circumstances, an organization that qualifies as exempt from the payment of income tax under section 501 (c) (3) is required to file a form 990 that distinguishes contributions, gifts, public support and government contributions (grants) (lines 1 a-d) from income-producing activities such as “program service revenue” including “fees and contracts from government agencies”. Lines 2, 93 a-e, g. This return is required to be attested to under penalties of perjury.